

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD

NBCUniversal Media, LLC,	:	NLRB Case No. 02-CA-115732
	:	
Respondent,	:	<i>On Remand from the</i>
	:	<i>United States Court of Appeals</i>
--and--	:	<i>D.C. Circuit (Nos. 14-1080 & 14-1055)</i>
	:	<i>& the National Labor Relations Board</i>
NATIONAL ASSOCIATION OF	:	
BROADCAST EMPLOYEES &	:	
TECHNICIANS -	:	
COMMUNICATIONS WORKERS OF	:	
AMERICA, AFL-CIO,	:	
	:	
Charging Party.	:	

CHARGING PARTY'S OPPOSITION TO
NBC'S REQUEST FOR REVIEW

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I. INTRODUCTION

The National Labor Relations Board ("Board") in 1944 certified the National Association of Broadcast Employees & Technicians, AFL-CIO ("NABET")¹ as the exclusive representative of a nation-wide bargaining unit of all technical and engineering employees of National Broadcast Company, Inc.² ("NBC"). National Broadcasting Co., Inc., 59 NLRB 478, 485 (1944). In 2011, the Acting Regional Director for Region 2 granted NABET-CWA's unit clarification petition (02-CA-625), and found its bargaining unit to include the newly-created title of Content Producer at WNBC (New York), KNBC (Burbank, CA) and WMAQ (Chicago).³ The Board denied the Employer's Request for Review in 2013.

NBC refused to bargain with NABET-CWA, which prompted the Union to file the present unfair labor practice charge (02-CA-115732), a run-of-the mill test of certification case. Region 2 issued a Complaint, alleging violations of subsections 8(a)(1) and (5) of the National Labor Relations Act ("Act"), 29 U.S.C. §151 *et seq.* In its Answer to the Complaint, NBC admitted its refusal to bargain with NABET-CWA concerning the terms and conditions of employment for the Content Producers.

¹ NABET merged with the Communications Workers of America, AFL-CIO ("CWA") in 1994, and has been known as NABET-CWA ever since.

² The Company is now known as NBCUniversal Media, LLC.

³ NABET-CWA's unit clarification petition (02-UC-625) sought to add the newly-created job of Content Producer to its bargaining unit, including the Content Producers employed at WRC-TV in Washington, DC. The ARD, with Board approval, dismissed that portion of NABET-CWA's petition that related to WRC-TV, because another Union, SAG-AFTRA, also filed a unit clarification petition (05-UC-407) for the same employees. The ARD and Board also dismissed SAG-AFTRA's petition, and held an election under Section 9(a) of the Act is required to decide the question concerning representation. The ARD likewise dismissed all the unit clarification petitions filed by the Locals (2-UC-619; 5-UC-619; 13-UC-417; and 31-UC-323).

Counsel for the General Counsel filed a Motion for Summary Judgment, which was granted by the Board on April 7, 2014. NBC Universal, Inc., 360 NLRB No. 69 (2014). The Board held that NBC violated §§8(a)(1) and (5) of the Act by its refusal to recognize and bargain with NABET-CWA, and directed NBC to bargain in good faith with NABET-CWA over the terms and conditions of employment for the Content Producers.⁴

NBC filed a Petition for Review with the United States Court of Appeals for the D.C. Circuit. NBC challenged the Board's rejection of its affirmative defense, that NABET-CWA has a single bargaining unit at NBC, which includes all Content Producers employed at WNBC, KNBC, and WMAQ.⁵ The Board filed a cross-application for enforcement of its Order.

On February 23, 2016, the D.C. Circuit issued its Opinion, in which it did not reject or reverse the Board's decision on the issues. Instead, the Court remanded the matter for the Board to decide two (2) specific issues: does NABET-CWA have a single bargaining unit at NBC; and did Local 11 bind the Sector (national union) by signing an Agreement on the unit placement of the Content Producers in September 2008. The Court asked the Board to "...explain both the principles embodied in the relevant precedent and how application of those principles to the facts here supports its

⁴ NABET-CWA relies upon the factual and legal arguments made previously to the Board in the underlying unit clarification proceeding, and focuses its arguments herein on the issues raised in NBC's Request for Review.

⁵ NBC also appealed the Board's decision that an agreement signed by a Local Union President did not bar the National Union (known as the "Sector") from filing a unit clarification petition.

resolution of the parties' dispute." NBCUniversal Media, LLC v. NLRB, 815 F.3d 821, 834 (D.C. Cir. 2016).⁶

Significantly, the Court of Appeals found:

NBC does not now dispute that it refused to bargain with NABET over its Content Producer position and that it also refused to provide the Union with information about the new job classification. In addition, the Company does not now contest that if the Master Agreement encompasses a single, nationwide bargaining unit, then the *Premcor* standard would apply to determine whether the Content Producer position is within the unit.

NBCUniversal Media, 815 F.3d at 828 (D.C. Cir. 2016).

The Board on May 24, 2016 accepted the Court's remand. By Order dated March 7, 2017, the Board remanded the case to Region 2 and announced:

Having considered the Court's opinion and the statements of position, we find that the issues raised by the Court can best be resolved by remanding this proceeding to the Regional Director for further analysis in light of the Court's opinion, including reopening the record, if necessary. In remanding the case, we find that the "wholistic" approach followed in cases involving master agreements such as *CBS*, 208 NLRB 825, *National Broadcasting Co.*, 114 NLRB 1, and *American Broadcasting Co.*, 114 NLRB 7 is appropriate to address the single versus multiple unit issue instead of the "two-step" bifurcated approach set forth by the Acting Regional Director. (March 7, 2017 NLRB Order of Remand).

By Order dated March 28, 2017, the Regional Director for Region 2 announced her decision to reopen the record "to afford the parties the opportunity to supplement

⁶ NBC argued that a September 2008 Agreement between WNBC and NABET-CWA Local 11 precluded the Sector from filing its unit clarification petition. In essence, that Agreement allowed all NABET-CWA members who became Content Producers to remain in the bargaining unit, but required a Board election if the Union sought to represent the new hires.

the record on the issue of whether a single, national unit exists, or whether multiple units exist." A five-day hearing took place on May 22 – 26, 2017. Michael Lebowich, counsel for NBC, acknowledged the limited scope of the supplemental hearing:

Pursuant to the Regional Director's order we are here today to address a single question. Has anything changed over time in the bargaining relationship between NABET and NBC, whereby the parties have clearly and unambiguously agreed to abandon the explicit, defined multiple bargaining unit structure and replace it with a single bargaining unit covering all employees represented by NABET at NBC?

(NBC's Opening Argument, 2017 Tr. pp. 64-65).

On December 13, 2018, the Regional Director issued his Supplemental Decision. The Regional Director affirmed all of the findings in the underlying unit clarification case. (Supp. Dec. at 2). The Regional Director affirmed that NABET-CWA has one bargaining unit at NBC, and that Local 11 did not bind the Sector when it signed an Agreement with NBC in September 2008. The Supplemental Decision is well-reasoned, and the factual findings are well-supported by record evidence. As directed by the Court's Order of Remand, the Regional Director provided a comprehensive written analysis of relevant Board precedent.

NBC again filed a Request for Review, now pending before the Board. NBC seeks to expand the issues to be decided by the Board well-beyond the limited scope of the Court of Appeals' and Board's remand orders. NBC likewise raises issues in its Request for Review that it did not plead in its Answer in the test-of-certification unfair labor practice Complaint (02-CA-115732), it did not present to the Regional Director at either the 2011 or 2017 hearings, or in its post-hearing briefs. NBC failed to demonstrate

that review is warranted under NLRB Rules & Regs. §102.67(d). Its Request for Review must be denied.

In its Request for Review, NBC acknowledged the limited scope of the remand: the single versus multiple unit question, and the application of the Local 11 Agreement. (Request, p. 5). Nevertheless, nearly one-half of its Request for Review is devoted to its previously-abandoned argument that the Acting Regional Director in 2011 and the Board in 2013 erred in the application of Premcor, 333 NLRB 1365 (2001) in this matter. (Request, pp. 1-3; 7-8; 10-22; 38-40). The Court of Appeals correctly held that NBC conceded that the Premcor standard applied when determining the unit placement issue. NBCUniversal Media, 815 F.3d at 828. NBC's renewed protest on the abandoned issue is inappropriate, and warrants the denial of its Request for Review.

NBC in its Request for Review argued for the first time that the Board should apply its "contract coverage" analysis in this representation case. (Request, pp. 2; 17-19). First and foremost, NBC did not raise the contract coverage issue as a defense in its Answer in 02-CA-115732. NBC did not litigate this issue in either the 2011 or the 2017 hearings. NBC did not raise the argument until its pending Request for Review.

NBC admitted the Board has never applied its contract coverage analysis in a representation case, yet it urges the Board to now decide this issue of first impression, raised for the very first time on appeal. (Request, p. 17). The inclusion of the new argument in its Request for Review is wholly inappropriate, and is contrary to the Board's clear, long-established rule that a party in a Request for Review "may not raise any issue or allege any facts not timely presented to the Regional Director." NLRB

Rules & Regs. §102.67(e). The inclusion of previously abandoned and new issues in its submission warrants a denial of NBC's Request for Review.

Regarding the issues within the scope of the remand, NBC failed to establish compelling reasons that warrant a review of the Regional Director's Supplemental Decision. The Regional Director granted NBC's request to reopen the record, and a five-day hearing ensued. The Regional Director made factual findings well-grounded in the record evidence, and he correctly applied those facts to established Board law.

NABET-CWA and its Locals filed the initial unit clarification petitions and unfair labor practice charges over ten (10) years ago. NBC unilaterally removed dozens of long-term bargaining unit members from the unit and placed them in the non-union Content Producer job, and unilaterally altered their wages and benefits. NABET-CWA respectfully asks the Board to deny NBC's Request for Review, and hasten its decision in this test of certification case.

II. ARGUMENT

The Board will grant a request for review only when the moving party demonstrates:

- (1) That a substantial question of law or policy is raised because of:
 - (i) The absence of; or
 - (ii) A departure from, officially reported Board precedent.
- (2) That the Regional Director's decision on a substantial factual issue is clearly erroneous on the record and such error prejudicially affects the right of a party.
- (3) That the conduct of any hearing or any ruling made in connection with the proceeding has resulted in prejudicial error.
- (4) That there are compelling reasons for reconsideration of an important Board rule or policy.

NLRB Rules & Regs. §102.67(d). NBC failed to establish the above factors are present in this case, and its Request for Review must be denied.

A. NBC's Argument on the *Premcor* Analysis is Beyond The Scope of the Remand

The Court of Appeals remanded the case to the Board, with instructions to the Agency to explain its decision on two specific questions: does NABET-CWA have a single bargaining unit at NBC; and did Local 11 bind the Sector when it signed an Agreement regarding the unit placement of Content Producers in September 2008.

NBCUniversal Media, LLC, 815 F.3d at 834. The Board by Order dated March 7, 2017, advised the parties:

Having considered the Court's opinion and the statements of position, we find that the issues raised by the Court can

best be resolved by remanding this proceeding to the Regional Director for further analysis in light of the Court's opinion, including reopening the record, if necessary. In remanding the case, we find that the "wholistic" approach followed in cases involving master agreements such as *CBS*, 208 NLRB 825, *National Broadcasting Co.*, 114 NLRB 1, and *American Broadcasting Co.*, 114 NLRB 7 is appropriate to address the single versus multiple unit issue instead of the "two-step" bifurcated approach set forth by the Acting Regional Director. (March 7, 2017 NLRB Order of Remand).

Likewise, the Regional Director reopened the record (at NBC's request) for the limited purpose "to afford the parties the opportunity to supplement the record on the issues of whether a single, national unit exists, or whether multiple units exist" and, as directed by the Court of Appeal, whether the Local 11 Agreement bound the Sector. (March 28, 2017 Order Reopening and Notice of Representation Hearing).

NBC acknowledged the limited scope of the supplemental hearing:

Pursuant to the Regional Director's order we are here today to address a single question. Has anything changed over time in the bargaining relationship between NABET and NBC, whereby the parties have clearly and unambiguously agreed to abandon the explicit, defined multiple bargaining unit structure and replace it with a single bargaining unit covering all employees represented by NABET at NBC?

(NBC's Opening Argument, 2017 Tr. pp. 64-65). NBC's post-hearing brief addressed the single unit/multiple unit question and the Local 11 Agreement issue.

NBC, in its Request for Review, argued the Regional Director "improperly applies the Board's decision in Premcor to the facts of this case." (Request, p. 3).

Approximately 20 pages of its Request are devoted to this issue. The application of Premcor in this case is not only settled, it is well beyond the limited scope of the remand.

It is long-settled that the Board will decline to review issues beyond the scope of a remand. Dubuque Packing Co., 303 NLRB 386 (1991) *enfd sub nom* United Food and Commercial Workers Union Local 15-A v. NLRB, 1 F.3d 24 (D.C. Cir. 1993)(Union could not relitigate proposed plant relocation issue it argued to the appellate court, where the Court of Appeal specifically limited the issues on remand); International Medication Systems, Ltd., 274 NLRB 1197 (1985) (Board recognized the Court's remand was binding for the purpose of deciding the case, and barred Respondent from raising matters beyond the scope of the remand); National Carbon Co., 116 NLRB 488 *fn. 5* (1956) *enfd* 244 F.2d 672 (6th Cir. 1957)(Trial Examiner properly excluded evidence offered by the Respondent as beyond the scope of the remand). NBC's renewed Premcor argument is beyond the scope of the remand here, and the Board should deny its Request for Review on this basis.

As noted above, the Court of Appeals correctly found that NBC conceded Premcor was the proper analysis at oral argument:

NBC does not now dispute that it refused to bargain with NABET over its Content Producer position and that it also refused to provide the Union with information about the new job classification. In addition, the Company does not now contest that if the Master Agreement encompasses a single, nationwide bargaining unit, then the *Premcor* standard would apply to determine whether the Content Producer position is within the unit.

NBCUniversal Media, 815 F.3d at 828 (D.C. Cir. 2016). Thus, NBC's claim that the Regional Director improperly applied Premcor is wholly without merit. Moreover, NBC did not address the Premcor issue, indeed, it did not even cite the case, in its post-hearing brief to the Regional Director. The Request for Review must be denied.

B. NBC's "Contract Coverage" Argument is Beyond the Scope Of the Remand and Was Not Presented to the Regional Director

Equally inappropriate is NBC's claim that the Board should, for the first time, extend its contract coverage analysis to this unit clarification case. (Request, pp. 2, 17-20). NBC never raised the contract coverage claim before its pending request. NBC did not raise it as a defense in its Answer to 02-CA-115732. NBC did not raise the matter at either the 2011 or 2017 hearings in the underlying unit clarification case. It failed to raise the issue in its post-hearing briefs. Nor did it raise the argument to the Court of Appeals. NBC cannot ask the Board to decide the case on an issue it never before mentioned.

The contract coverage issue is, accordingly, well outside the scope of the remand. The issue was not "timely presented to the Regional Director" as required by NLRB Rules & Regs. 102.67(e). NBC's Request for Review must be denied.

C. The Regional Director's Finding That NABET-CWA Represents A Single, Nation-Wide Unit Is Correct And Amply Supported By Record Evidence And Established Board Precedent

The Court of Appeals and the Board gave the Regional Director a clear directive on how he should analyze the issues on remand. The Regional Director followed the directive, and followed it well. The Regional Director granted NBC's request to reopen

the record, and a five-day hearing ensued. The Regional Director considered the parties' post-hearing briefs. The Supplemental Decision reflects the careful attention devoted by the Regional Director to the facts and law in this case.

NBC in its Request for Review focused heavily on issues it either previously abandoned (the application of Premcor) or never raised before its pending Request for Review (the contract coverage argument). Perhaps it chose this tactic to divert attention from the two issues properly before the Board now: the single unit question and the Local 11 Agreement dispute. NABET-CWA asks the Board to deny NBC's Request for Review in its entirety, for failure to satisfy the standard set in NLRB Rules & Regs. §102.67(d). Below we address some of NBC's more egregious misstatements on the issues within the scope of the remand.

1. The Regional Director Properly Found The Vast Vast Majority Of Employees Represented By NABET-CWA Work Under Article A

NBC falsely claims to the Board "the RD is simply wrong that the A unit is currently the only unit under which NABET-represented employees work." (Request, p. 28). It failed to provide a cite for that assertion because the Regional Director made no such finding.

The Regional Director, at page nine (9) of the Supplemental Decision, stated:

Notwithstanding the continued existence of the Individual Articles, the vast majority of employees represented by NABET have been, for some time, working under the terms of Article A. There is no evidence of employees currently working under any other Articles, except for Article C (two employees) and Article P (ten employees). In some cases, the parties have agreed that job classifications previously covered under the terms of now "empty" Individual

Articles, are now covered under the terms of Article A (this is apparently true of former Article B traffic coordinators and former Article O building maintenance employees).

NABET-CWA represents approximately 2,400 employees under the Master Agreement. (P. Ex 9, 2011 hearing exhibit). There is no dispute almost all NABET-CWA bargaining unit members work under Article A. Article A applies to "all the technical employees of the Company, wherever located," including but not limited to the classifications listed in Article A-III (Joint Ex. 1, p. 58; Joint Ex. 18, p. 61).

Article B of the Master Agreement memorializes the parties' agreement that the former "Traffic Coordinators" under the older version of Article B are now "Network Distribution Coordinators" under Article A. (Joint Ex. 1, p. 97; Joint Ex. 18, p. 107). This has been true since the 1980s. (Employer Ex. 52, 2017CPH-012367).⁷ Thus, there is no "B Unit" and no bargaining unit employees work under Article B.

Article C is the Staging Services Agreement for Washington, DC. (Joint Ex. 1, p. 98; Joint Ex. 18, p. 108). Side Letters WA-1, WA-2, and WA-3 in the Master Agreement provide that bargaining unit employees who worked under Article C were transferred to work under Article A, with their full seniority. (Joint Ex. 1, p. 217-221; Joint Ex. 18, pp. 224-228). Side Letter 53 further provides that work once done under Article C is now done under Article A. (Joint Ex. 1, p. 264; Joint Ex. 18, p. 276). Day Krolik, NBC's former head of labor relations (2017 Tr. 210), admitted that the work once done under Article C is now performed by technicians under Article A. (2017 Tr. 260). Angel Ortiz,

⁷ 2017CPH- denotes reference to the Bate Stamp page, for the convenience of the reader.

NBC's Vice President for Labor Relations, testified there are two (2) bargaining unit members performing work under Article C. (2017 Tr. 396).

Article D is the parties' New Business Agreement, which allows NBC to assign bargaining unit members working under the Individual Articles to new work. (Joint Ex. 1, p. 105-107; Joint Ex. 18, pp. 114-117). There are no job classifications under Article D: it is not a unit. (Joint Ex. 1, p. 105-107; Joint Ex. 18, p. 114-117).

Article E is the Building Maintenance Agreement for Chicago. (Joint Ex. 1, p. 108-109; Joint Ex. 18, pp. 117-119). The parties agreed the Company has the right to subcontract "all of the work covered by the "E" Contract." (Joint Ex. 1, p. 109; Joint Ex. 18, p. 119). There is no record evidence to show if there are any bargaining unit employees working under Article E.

There are no bargaining unit employees working under Article G.⁸ Article G describes the parties' agreement as to the duties to be performed by Technical Directors, covered under Article A. (Joint Ex. 1, p. 110; Joint Ex. 18, p. 119).

Article H is the Chicago Newswriters Agreement. (Joint Ex. 1, pp. 111-120; Joint Ex. 18, pp. 120 - 130). All of the Newswriters in Chicago were either laid off, or reassigned as non-unit Content Producers in 2009.⁹ Vice President of Labor Relations

⁸ There is no Individual Article "F".

⁹ NBC admitted in the 2011 unit clarification hearing that there were no newswriters under Articles H, M, and N after the implementation of the Content Center in 2008-2009. (2011 Tr. 1265; 2011 Tr.Chicago 48; 169-170).

Ortiz admitted there are no bargaining unit employees working under Article H. (2017 Tr. 387).¹⁰

Article J is the Chicago Couriers' Agreement. (Joint Ex. 1, pp. 121-131; Joint Ex. 18, pp. 129-139). NABET-CWA President Charles Braico testified without contradiction NBC laid off all couriers working under Article J, and Vice President of Labor Relations Ortiz acknowledged that he could not say if there are any bargaining unit members working under Article J. (2017 Tr. 389 and 431).

Article K is the Mail Messenger and Duplicating Section Agreement in Chicago. (Joint Ex. 1, pp. 132-139; Joint Ex. 18, pp. 140-142). There is no evidence as to whether any employees work under this Article. Article L is the Air Conditioning and Plant Maintenance Agreement for Los Angeles. (Joint Ex. 1, p. 135-139; Joint Ex. 18, pp. 142-147). Ortiz admitted there are no bargaining unit employees working under Article L. (2017 Tr. 381).

Article M is the Los Angeles Newswriters Agreement. (Joint Ex. 1, pp. 140-152; Joint Ex. 18, pp. 147-160). As noted above, there are no newswriters at KNBC working under Article M. Article N is the New York Newswriters Agreement. (Joint Ex. 1, pp. 153-168; Joint Ex. 18, pp. 160-175). Vice President of Labor Relations Ortiz admitted there are no bargaining unit employees working as local newswriters under Article N. (2017 Tr. 390).

Article O is the New York Building Maintenance Agreement. (Joint Ex. 1, pp. 169; Joint Ex. 18, pp. 176-177). Ortiz admitted there are no bargaining unit employees

¹⁰ There is no Individual Article "I" in the Master Agreement.

working under Article O. (2017 Tr. 389). Ortiz testified the building maintenance employees now work under Article A. (2017 Tr. 392).

Article P is the New York Air Conditioning Agreement. (Joint Ex. 1, pp. 171-175; Joint Ex. 18, pp. 178-182). Ortiz testified there are ten (10) bargaining unit employees working under Article P. (2017 Tr. 390).

Article U is the New York Couriers; Agreement. (Joint Ex. 1, pp. 176-187; Joint Ex. 18, pp. 183-195). There is no record evidence as to whether any bargaining unit employee works under Article U.

Thus, while the Individual Articles remain in the Master Agreement, there are no bargaining unit employees working under Articles B, D, G, H, J, L, M, N, and O. The record evidence demonstrates there are two (2) employees working under Article C, and ten (10) employees working under Article P. There is no record evidence as to whether any bargaining unit employees are working under Articles E, K, and U.

There are approximately 2,400 members in NABET-CWA bargaining unit at NBC. All but 12 work under Article A. Thus, the Regional Director was absolutely correct when he found that the "vast majority" of NABET-CWA-represented employees work under Article A.

2. The Regional Director Properly Concluded That The Supplemental Agreements Between NBC and NABET-CWA Do Not Disturb The Single-Unit Finding

The Regional Director examined multiple supplemental agreements negotiated between the parties as part of his consideration of the bargaining history. (Supp. Dec. pp. 13-16). NBC in its Request for Review complains that the Regional Director

misunderstood the purpose and role of the supplemental agreements. (Request, p. 32). Such is not the case.

The Regional Director acknowledged the existence of several supplemental agreements between the Sector (national union) and NBC, which allow all bargaining unit members the opportunity to work on events not otherwise covered by the Master Agreement, at modified wages and benefits levels. For example, the Regional Director analyzed the "MSNBC Agreement" which allows all bargaining unit members to work on programs that air on the cable network. (Supp. Dec. 13). The Regional Director also considered the multiple "Olympics Agreements" which allow all bargaining unit members to work overseas at the various Olympic Games. (Supp. Dec. 14). The Regional Director also examined a number of local agreements, between NBC and the NABET-CWA Locals in New York, Washington, DC, Chicago, and Los Angeles, who pertained to purely Local Union issues. (Supp. Dec. pp. 14-16).

The Regional Director found that the Supplemental Agreements show, as part of the overall bargaining history, the parties' desire to maintain a single, comprehensive multi-location nationwide unit. (Supp. Dec. p. 16). This conclusion is correct, and amply supported by the record evidence.

3. The Regional Director Properly Re-Affirmed the Board's 2013 Decision That NABET-CWA Has A Single Bargaining Unit At NBC

NBC challenged the Regional Director's factual findings and legal conclusions on the single-unit issue. (Request, pp. 23-35). As noted above, NBC claimed "the RD is simply wrong that the A unit is currently the only unit under which NABET-

represented employees work." (Request, p. 28). It failed to provide authority for that assertion because the Regional Director made no such finding. The Regional Director, at page nine (9) of the Supplemental Decision, stated "the vast majority of employees represented by NABET have been, for some time, working under the terms of Article A." (Suppl. Dec., p. 9). This is correct. Of the roughly 2,400 members of the NABET-CWA bargaining unit at NBC, twelve (12) work under an Article other than Article A.

a. The Regional Director Examined the Master Agreement

NBC challenged the Regional Director's exhaustive review of the parties' Master Agreement. (Request, pp. 27-29). The careful examination was required as part of the remand. The Regional Director found that the terms of employment for NABET-CWA's bargaining unit at NBC "are set by the Master Agreement as a whole – the General and Individual Articles, along with the Sideletters." (Supp. Dec. p. 12).

The parties' Master Agreements are comprised of three parts: the General Articles, which apply to all unit employees, wherever they work, and whatever job they perform for the Company; Individual Articles, which apply to bargaining unit members working in specific classifications or cities; and a series of side letters and stipulations, in which the parties' agreed to modify both the General and Individual Articles in certain situations. This three-part format has existed for more than fifty (50) years. (Joint Ex. 12; Joint Ex. 13; Joint Ex. 14; Joint Ex. 15; Joint Ex. 16; Joint Ex. 17; Joint Ex. 18).

The General Articles in the Master Agreements apply to all unit employees, regardless of the job they perform, or the city in which they perform the work. (Joint

Ex. 12 - 18). For example, the parties agreed, in Article V, to a "no strike – no lockout" provision which applies to all bargaining unit employees, during the life of the Master Agreement, in all cities. (Joint Ex. 18, p. 7). Article VI prohibits the Employer from transferring or subcontracting "any work or functions covered by this Agreement and presently being performed by employees in the bargaining unit..." (Joint Ex. 18, p. 8).

Additional General Articles in the Master Agreements include:

- Article VIII, which establishes a uniform work day and work week for all bargaining unit members, and requires NBC to pay the same overtime and various penalties (turnaround, long tours, schedule changes, etc.) to all bargaining unit members;
- Article IX, which grants to all bargaining unit members a meal period;
- Article X, which requires NBC to pay a night differential to all bargaining unit members;
- Article XVIII, which grants all bargaining unit employees the same holidays;
- Article XIX, which grants vacations to all bargaining unit employees; and
- Article XX, the parties grievance and arbitration procedure.

(Joint Ex. 12, p. 1; Joint Ex. 13, p. 1; Joint Ex. 14, p. 1; Joint Ex. 15, p. 1; Joint Ex. 16, p. 1, Joint Ex. 17, p. 1; and Joint Ex. 18, p. 1).

And Article XII, §12.1 allows bargaining unit members to transfer to other job classifications covered by the Master Agreement. Bargaining unit members may

transfer to jobs covered under a different Individual Article, and retain their seniority, under §12.1(b). (Joint Ex. 18, p. 28).

As noted above, there is no dispute almost all – more than 99% -- of NABET-CWA bargaining unit members are technicians and engineers under Article A. Article A applies to "all the technical employees of the Company, wherever located," including but not limited to the classifications listed in Article A-III (Joint Ex. 1, p. 58; Joint Ex. 18, p. 61). Thus, Article A sets the wages and certain other terms of employment for more than 99% of NABET-CWA's bargaining unit at NBC.

The Master Agreements, for decades, have contained a number of Sideletters that modify or provide additional benefits for all bargaining unit employees. For example, Sideletter 6 (Joint Ex. 18, p. 237) provides all bargaining unit employees who must travel one hundred (100) miles or more away from the office for an assignment will be provided sleeping accommodations. Sideletter 10 provides additional benefits to bargaining unit employees assigned to work outside of the continental United States. (Joint Ex. 18, p. 238). Sideletter 32 modifies several General Articles as they may apply to daily hire employees. (Joint Ex. 18, pp. 261-267).

b. The Regional Director Examined the Bargaining History

NBC found fault with the Regional Director's review of the parties' bargaining history, another factor he was directed to consider as part of the remand. The Regional Director found "[p]arty representatives during contract bargaining were largely consistent over multiple negotiation sessions for a given contract." (Supp. Dec. 12). This finding is supported in the record.

NBC's complete bargaining notes from 1987 are in evidence as Employer Ex.37. The first page of notes for each day of bargaining contains an attendance list. The first session occurred on January 13, 1987. (Employer Ex. 37, 2017CPH-004349). NBC's representatives at the opening session were: Day Krolik, John Bailie, Irv Brand, Paul Beavers, Rovert Corwin, Bernard Gehan, Duffy Sasser, David Heiser, Mac McGill, Doug Skene, Tom Wozien. (Employer Ex. 37, 2017CPH0004349). NABET-CWA's representatives at the opening session were: James Nolan, International President, Carrie Biggs-Adam, Local 53, Richard Beidel, Local 41, William Bryan, Local 42, John Clark, Local 11, Arthur Kent, Local 11, Thomas Kennedy, Network Coordinator, John Krieger, Assistant to Network Coordinator, and Lawrence Reynolds, Local 31. (Employer Ex. 37, 2017CPH-004350).

The second session occurred on January 15, 1987. (Employer Ex. 37, CPH-004366). NBC's representatives at the opening were the same, with the exception of Duffy Sasser not being present. NABET-CWA'S representatives at the opening session were the same with the exception of James Nolan, International President, not being present, and the addition of Bruce Black, Local 51. (Employer Ex. 37, 2017CPH-004366).

There were a total of 47 sessions in 1987.¹¹ The parties generally used the same negotiators throughout bargaining. This is amply supported in the record evidence.

Bargaining notes and attendance lists for negotiations in 1970, 1973, 1976, 1980, 1983, 1987, 1990, 1994, 1999, 2002, and 2006 reveal the same pattern, (Petitioner Ex. 37;

¹¹ In its post-hearing brief to the Regional Director, NABET-CWA listed the attendees for each session, but will not repeat the exercise herein.

Employer Ex. 33-42). Former head of labor relations Krolik testified that the majority of bargaining sessions, while he was involved in negotiations for NBC, were attended by the parties' full committees. (2017 Tr. 246). Krolik testified that on occasion, small groups would meet to discuss the Individual Articles, but he could not remember the number of times this might have occurred. (2017 Tr. 247).

c. The Regional Director Examined Bargaining Proposals

NBC complained in its Request for Review that the Regional Director ignored the parties' bargaining proposals on the General and Individual Articles. (Request, p. 30). The Regional Director did not ignore the bargaining proposals. Indeed, he found that the parties exchanged proposals on both General and Individual Articles at the same bargaining sessions, often as a package. (Supp. Dec. p. 12).

NBC's complete bargaining proposals for the 1990 negotiations are in evidence as Employer Ex. 52. The notes are organized by Articles. The first Article in in Employer Ex. 52 (Binder Volume 9) is Article III, Employment. (Employer Ex. 52, 2017 CPH-011925-011927). It was introduced on January 9, 1990, the first day of negotiations. (*Id.*).

NBC on January 9, 1990 also made proposals to modify the following Articles and Sideletters:

Article VII (2017CPH-011928-011931);

Article VIII (2017CPH-011952-011958);

Article X (2017CPH-011959-011960);

Article XI (2017CPH-011961-011966);

Article XII (2017CPH-011973);

Article XIII (2017CPH-011981);

Article XIV (2017CPH-011982-011987);

Article XV (2017CPH-011988);

Article XVI (2017CPH-011990-011994);

Article XVIII (2017CPH-011995);

Article XIX (2017CPH-011996);

Article XX (2017CPH-012002-012004);

Article XXI (2017CPH-012007);

Article XXII (2017CPH-012013-012021);

Article XXIII (2017CPH-012022-012023);

Article XXIV (2017CPH-012024);

Article A-II (2017CPH-012030-012033; 2017CPH-012040-012043;
2017CPH-12050-012053; 2017CPH-012058-012061; 2017CPH-012070-
012073; 2017CPH-012080012083; 2017CPH-012086-012087);¹²

Article A-III (2017CPH-012098-012099);

Article A-IV (2017CPH-012105-012109);

Article A-V (2017CPH-012111);

Article A-VII (2017CPH-012112-012113);

Article A-VIII (2017CPH-012116-012118; 2017CPH-012127-012132);

Article A-XVI (2017CPH-012138);

¹² The specific cites refer to the multiple subsections of Article A-II that NBC proposed to modify on the first day of bargaining.

Sideletter GA-1 (2017CPH-012183);

Sideletter WA-1 (2017CPH-012185-012186);

Sideletter 13 (2017CPH-012237);

Sideletter 14 (2017CPH-012245-012249);

Sideletter 30 (2017CPH-012250-012251);

Sideletter 32 (2017CPH-012252-2017CPH-012261);

Sideletter 39 (2017CPH-012287);

Sideletter 41 (2017CPH-012288);

Sideletter 42 (2017CPH-012289);

Sideletter 43 (2017CPH012291012292);

Sideletter 44 (2017CPH-012293-012294);

Sideletter 45 (2017CPH-012297-012298);

Sideletter 47 (2017CPH-012302);

Sideletter 48)2017CPH-012307012310);

Sideletter 49 (2017CPH-012311);

Sideletter 50 (2017CPH-012313);

Sideletter 52 (2017CPH-012316-012318);

Article C-IV (2017CPH-012372-012373);

Contracts E & K (2017CPH-012378-012383);

Article G-V (2017CPH-012384-012385);

Article H-I (2017CPH-012390-012391; 2017CPH-012396-012397);

Article H-II (2017CPH-012399);

Article H-IV (2017CPH-012403);

Contract J (2017CPH-012404);

Article M-I (2017CPH-012405-012406);

Article M-II (2017CPH-012413-012414);

Article N-I (2017CPH-012422; 2017CPH--12426);

Article N-II (2017CPH-012428-012429);

Article N-V (2017CPH-012446);

Article N-VI (2017CPH-012447012449);

Article N-VIII (2017CPH-012453);

Article N-XII (2017CPH-012454);

Article N-XII (2017CPH-012455);

Article P-II (2017CPH-012457-012459);

Article P-IV (2017CPH-012463);

Article T-IV (2017CPH-012464);

Article T-V (2017CPH-012466);

Article U-II (2017CPH-012470);

Article U-IV (2017CPH-012472-012473);

Article U-V (2017CPH-012476);

Article U-VI (2017CPH-012481-012483);

Article U-VIII (2017CPH-012490);

Article U-IX (2017CPH-012491-012492);

Article U-X (2017CPH-012500).

On subsequent bargaining dates in 1990, NBC likewise made proposals and counterproposals on various General and Individual Articles, and the Sideletters. For example, on March 24, 1990, NBC made counterproposals to NABET-CWA on the following Articles: Article VII (2017CPH-011935-011937); Article X (2017CPH-011960); Article XI (2017CPH-011961-011962); Article A-II (2017CPH-012077-012079); Article A-III (2017CPH-012101-012102); Article A-VIII (2017CPH-012125-012126); Sideletter 32 (2017CPH-012277-012283); Sideletter 52 (2017CPH-012325-012329); Sideletter 55 (2017CPH-012335-012336); Article C-IV (2017CPH-012376-012377); Article G-V (2017CPH-012388-012389); Article H-I (2017CPH-012394-012395); Article M-I (2017CPH-012409-012410); Article N-I (2017CPH-012425); Article N-II (2017CPH-012433); Article N-VI (2017CPH-012450-012452); Article U-VI (2017CPH-012487-012489).

NBC's complete bargaining proposals for 1994 are in evidence as Employer Ex. 53 (Binder Volume 9). The first session occurred on January 10, 1994. (Employer Ex. 53, 2017CPH-012503). As was the case in 1990, NBC's initial set of bargaining proposals to NABET-CWA sought to modify the Individual and General Articles, as well as the multiple Sideletters. On subsequent bargaining dates in 1994, NBC likewise made proposals and counterproposals on various General and Individual Articles. For example, on February 23, 1994, NBC made counterproposals to NABET-CWA on Article III (2017CPH-012513); Article XX (2017CPH-012587); Article XXI (2017CPH-012591); Article A-II (2017CPH—12630); and Sideletter 7 (2017CPH-012763).

The same format for making bargaining proposals on multiple General and Individual Articles and Sideletters on various dates has been consistent throughout the parties' lengthy bargaining history. (Employer Ex. 50 - 57).

d. The Regional Director Examined Bargaining Sessions

The Regional Director found that the parties' bargaining teams, comprised of local and national representatives, discussed all proposals, on General and Individual Articles, as a group. (Supp. Dec., p. 12-13). This is amply supported in the record.

NBC's bargaining notes from 1994 are in evidence as Employer Ex. 39 (Binder Volume 5). As noted above, the first page of bargaining notes for each date lists the representatives for each side. The notes also reflect that the parties discussed proposals on the General and Individual Articles, and the Sideletters, interchangeably. NBC's bargaining notes reflect that the parties discussed the following General and Individual Articles, and Sideletters, on February 8, 1994: Article II (2017CPH-007083); Article III (2017PCH-007086); Article IV (2017PCH-007087); Article VII (2017PCH-007088); Article VII (2017PCH-007094); Article XIX (2017PCH-007105); Articles X and XI (2017PCH007106); Article XII (2017PCH-007108); Article XIII (2017PCH-007109); Article XIV (2017PCH-007110); Article XV (2017PCH-007112); Article XVI (2017PCH007113); Article XVIII (2017PCH-007115).

The parties continued the following day, February 9, with discussions on Article XX (2017PCH-007123); Article XXI (2017PCH-007129); Article XXII (2017PCH-007138); Article XXIII (2017PCH-007140); Article XXIV (2017PCH-007141); Article A-II (2017PCH-007144); Article A-III (2017PCH-007152); Article A-IV (2017PCH-007154);

Article A-VII (2017PCH-007159); Article A-VIII (2017PCH-007163); and Article A-16 (2017PCH-007167). On February 10, the parties resumed negotiations, and discussed Article XX (2017CPH007170); Sideletter GA-1 (2017CPH-007117); Sideletter WA-I (2017PCH-007183); Sideletter 4 (2017PCH-007201); Sideletter 26 (2017PCH-007211); and Article A-II,9 (2017PCH-007217). The same practice continued in 1994 and subsequent negotiations.

4. The Regional Director's Legal Conclusions
On the Single Unit Issue Are Correct And
Should Not Be Disturbed

The Court of Appeals did not reject the Board's 2013 conclusion, that NABET-CWA represents a single bargaining unit at NBC: it asked the Board to explain the rationale for its holding, and to apply the factors considered by the Board in Columbia Broadcasting Systems, 208 NLRB 825 (1974) ("CBS"), a case involving a Master Agreement similar to the parties' Master Agreement, and National Broadcasting Co., 114 NLRB 1 (1955) ("NBC").¹³

The supplemented record, developed over five days of hearing, and 170 new exhibits (some of which are several hundred pages long), demonstrates even more clearly now that the Board's 2013 decision should be embraced. NABET-CWA has one bargaining unit at NBC. The Regional Director correctly reached this conclusion. He examined the cases as directed by the Court and the Board, namely CBS, NBC, and

¹³ The appellate court cautioned the 1955 NBC case should not be considered dispositive, given the 60 years of bargaining that has since transpired between the parties.

American Broadcasting Co., 114 NLRB 7 (1955)("ABC"). (Supp. Dec., pp. 4-6; 19-23).

NBC's complaint that the Regional Director misapplied the cases, and "ignored ABC completely" is false. (Request for Review, p. 36). The Regional Director discussed ABC at pages 4 and 6 of his Supplemental Decision.

In CBS, NABET-CWA sought a unit of newswriters employed by CBS in Los Angeles. The Employer took the position that its newswriters were part of a single, nationwide unit. 208 NLRB at 825. In CBS, the incumbent first organized, and represented, the newswriters in Los Angeles: it organized a single facility unit. *Id.* The bargaining history revealed that for several years, until 1958, the collective bargaining agreement covered a single city. *Id.* For ten (10) years after 1958, CBS and the incumbent negotiated a "national agreement" in New York, with a "local supplement" negotiated separately, in Los Angeles. *Id.* In 1968, the parties began to negotiate the national agreement and local supplement together, with the same committee. *Id.*

Six years after the parties began negotiating the national agreement and local supplement at the same time, NABET-CWA filed its petition. 208 NLRB at 826. The national agreement in effect in 1974 contained general articles such as a union security clause, dues checkoff, vacations, sick leave, and a grievance procedure. *Id.* The local supplement contained salaries, allowances, and overtime provisions. *Id.*

The Board held, in agreement with CBS, that the newswriters were in a single, nation-wide unit. The Board explained "that the Employer and the Intervenor, by their acts in negotiating on a multistate basis...have indicated their intent to be bound in a unit no smaller than that multistate unit." 208 NLRB at 826.

The Board based its decision on the following factors:

- a single bargaining team negotiated both the national Agreement and the local supplement;
- the parties bargaining for the national agreement and the Local supplement at the same time, for six years;
- the local supplement was not a complete "stand alone" agreement – it was dependent on the National agreement; and
- the national agreement did not reference separate units.

208 NLRB at 826.

The Regional Director here engaged in an exhaustive review of the record evidence and applied the same to the factors relied upon by the Board in CBS. The same conclusion – that the Union had a single, nation-wide bargaining unit – is warranted in this case. There is no reason to disturb the Board's 2013 decision. The Board in CBS emphasized, in finding a single, nationwide unit appropriate, that the parties negotiated the national agreement and the supplement at the same time, with the same bargaining teams. 208 NLRB at 826. That is true here.

NABET-CWA's 1944 certification demonstrates that the Union has a single, nationwide bargaining unit at NBC. Application of the CBS factors to the facts at hand does not alter this conclusion. As the Board held in 2013, the parties have negotiated a single Master Agreement, each with one bargaining team, ratified by all bargaining unit members at the same time. The Regional Director's legal conclusions are sound.

The Board in NBC, 114 NLRB 1 (1955) found that NABET-CWA represented multiple bargaining units at NBC. NBC and ABC arose in the context of the same rival

union seeking to decertify and replace NABET as the exclusive representative of editors. The decisions (in each case) was based on a four-year period of bargaining, from 1951 (when NABET was certified to represent film editors in Los Angeles as a separate unit) to 1955, when a rival union sought to represent the same group. The Board reached the same result (in the same day) in ABC, 114 NLRB 7 (1955). Once again, the same rival union sought to replace NABET as the representative for the film editors, which NABET organized in 1951. The Board noted that no party offered evidence to show whether in the four years since NABET was certified to represent the film editors, there was an attempt to merge the unit with another group. 114 NLRB at 9. ABC and NBC bargained jointly with NABET-CWA until 1973.

The Regional Director, considering the Board's decisions in ABC and NBC properly found that the editors, in a distinct bargaining unit some 60 years ago, have for decades worked under the Article A. (Supp. Dec., p. 22).

Clearly, the Board's decision in CBS, when applied to the facts in this case, show the Regional Director properly found that NABET-CWA has a single bargaining unit at NBC. Significantly, the 2009 "Content Producer" Agreement NBC presented to former Local 11 President Ed McEwan, which allowed NABET-CWA bargaining unit members to remain in the bargaining unit while working as Content Producers, made no distinctions between employees working under Article A and Article N, the New York Newswriters Agreement. (Employer Ex. 10). NABET-CWA bargaining unit members had the same opportunities to do the work, and remain in the unit. Clearly, NBC considered the Content Producer as a bargaining unit position, at least in 2008.

There can be no question that NABET-CWA has a single, nation-wide bargaining unit at NBC.

D. The Regional Director Properly Concluded the Local 11 Agreement Did Not Bind The Sector, And the Board's 2013 Decision Should Not Be Disturbed

In its Request for Review, NBC complained "the Regional Director again departed from Board precedent when he found that the Sector was not bound by the September 19, 2008 agreement between NBC and NABET Local 11." (Request, p. 41). Once again, NBC is wrong.

As a preliminary matter, in its 2011 Request for Review, NBC stated that "the Company is not asserting that [the Local 11 Agreement] barred the filing of any of the Union's petitions... " (2011 Request, p. 22). If anything, NBC urged the Board, the Local 11 Agreement only tied the hands of the Local. (2011 Request, p. 14).¹⁴

NBC suggested NABET-CWA and Local 11 are "joint bargaining representatives." (Request, pp. 41-42). This is ridiculous. There is no dispute that the Sector, the national union, alone is the certified representative of the bargaining unit at NBC. The Sector President signs the Master Agreement on behalf of the Union. There is no Board, court, or arbitration decision finding the Sector and any of its locals to be "joint representatives."

¹⁴ In its 2011 Request for Review, NBC also referenced a 2010 partial dismissal letter in a Charge filed by the Sector (02-CA-39208). NABET-CWA alleged in the Charge that NBC bypassed the Sector when it asked the Local 11 President to sign the Agreement. NABET-CWA asks the Board to take administrative notice of the Office of Appeals November 5, 2013 decision to grant, in relevant part, NABET-CWA's appeal. In the letter, then General Counsel Lafe Solomon found that Local 11 lacked the authority to enter into the agreement.

NBC referenced "Local 11 negotiating agreements with NBC without any Sector involvement." (Request, p. 43). The "agreements" were for the most part grievance settlement agreements. The parties' grievance procedure allows local station management and Local officer to settle local grievances. NBC also noted a handful of agreements between the Local and NBC concerning work done on television shows solely in New York. (Request, p. 45). There is no dispute here that when NBC drafted the Local 11 Agreement in 2008, it knew it would be implementing its Content Center plan nation-wide. Thus, it was more akin to the Olympics Agreements, always negotiated between NBC and the Sector.

The Board in 2013 properly concluded that the Local 11 Agreement (to allow NABET-CWA members assigned to work as Content Producers to remain in the bargaining unit) did not bind the Sector, and did not prevent the Sector from seeking to include all Content Producers, including those employed in New York, in the bargaining unit. The supplemented record evidence does not require a reversal on this issue. The evidence reveals that when NBC sought to alter terms and conditions of employment for bargaining unit employees, at more than one office, it bargained with the Sector.

E. The Content Producer Job Is Similar To The Video Journalist Job, Which Exists Under Articles A, H, M, and N of the Master Agreement

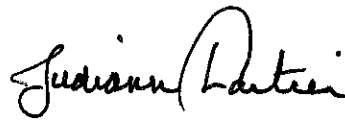
NABET-CWA asks the Board to keep in mind a fact that the Union has mentioned often in this case. There is no dispute that NBC created the Content Producer job in 2008, so that it could combine shooting, writing, editing, and producing

into a single position. These tasks are performed daily by NABET-CWA-represented Video Journalists, some of whom testified at the 2011 hearing. For decades, the Video Journalists have worked under Articles A, H, M, and N of the parties' Master Agreement. The Video Journalist title can be found in the list of classifications in each Article. The wages and benefits listed are identical. For this reason, the Locals each attached the list of classifications in Articles A and H, M, and/or N to the unit clarification petitions.

III. CONCLUSION

NABET-CWA urges the Board to deny NBC's Request for Review. The Regional Director's Supplemental Decision is well-supported by the record evidence, and contains a comprehensive and correct analysis of Board law.

Respectfully,

A handwritten signature in black ink, reading "Judiann Chartier". The signature is fluid and cursive, with the first name "Judiann" and last name "Chartier" clearly distinguishable.

Dated: February 28, 2019

Judiann Chartier
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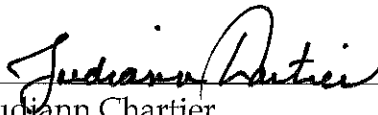
Certification of Service

I hereby certify that on this day I filed NABET-CWA's Opposition to NBC's Request for Review electronically with the Board and Region 2. I further certify that a copy of NABET-CWA's Opposition was served electronically upon:

Michael Lebowich, Esq. (mlebowich@proskauer.com)

Corinne Osborn, Esq. (cosborn@proskauer.com)

Dated: February 28, 2019


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